

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK JOHNATHAN MANSFIELD,

Defendant and Appellant.

F077547

(Super. Ct. No. CRP50930)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Tuolumne County. Frank Dougherty, Judge. (Retired judge of the Merced County Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

-ooOoo-

* Before Franson, Acting P.J., Meehan, J. and Snauffer, J.

Appellant Mark Jonathan Mansfield appeals from the trial court's order committing him for an indeterminate term to the custody of the State Department of Mental Health (DMH), (Welf. & Inst. Code, § 6604) as a sexually violent predator (SVP) under the Sexually Violent Predator Act (the Act) (Welf. & Inst. Code, § 6600 et seq.).

Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

As early as 1997, when he was 21 years old, Mansfield began sexually molesting his nine-year-old adopted sister. The molestations involved Mansfield touching and/or penetrating the victim's vagina.

On March 24, 2003, Mansfield pled guilty to lewd and lascivious conduct with a child under the age of 14 years old (Pen. Code, § 288, subd. (a))¹ and was subsequently placed on probation for five years conditioned on him serving 60 days in local custody. He was also required to register as a sex offender.

In December 2011, after returning to live at his mother's house, Mansfield began molesting two other adopted sisters who were then 15 and 17 years old. The developmentally delayed, 17-year-old victim reported to authorities that several years earlier when she was 12, Mansfield penetrated her vagina with his fingers and that he had also done this a few weeks earlier. The 15-year-old victim reported that Mansfield would touch her private areas and that the most recent incident occurred in February. She also reported that Mansfield had engaged in similar conduct with her at least three years earlier.

On September 10, 2012, Mansfield pled guilty to penetration with a foreign object (§ 289, subd. (h)) and lewd and lascivious conduct with a child 14 or 15 years of age

¹ Statutory references are to the Penal Code unless otherwise noted.

(§ 288, subd. (c)(1)). He also admitted that he had a prior conviction within the meaning of the “Three Strikes” law.

On October 22, 2012, Mansfield was sentenced to an aggregate prison term of five years four months.

On October 30, 2012, he was sentenced to a concurrent 16-month term on his conviction for failing to register as a sex offender.

On July 27, 2016, the Tuolumne County District Attorney filed a petition to commit Mansfield as a SVP to the DMH. On August 11, 2016, the court found probable cause existed to pursue civil commitment proceedings under the Act and it ordered Mansfield to remain in a secure facility pending a trial in the matter.

On May 8, 2018, the trial court heard and denied Mansfield’s *Marsden*² motion.

On May 9, 2018, after the parties waived their right to a jury trial, a court trial on the petition began during which the prosecution presented testimony from three psychologists, Drs. Harry Goldberg, Siobhan Donovan, and Michelle Vorwerk. The psychologists each testified that the sex offenses Mansfield was convicted of in 2003 and 2012 were qualifying violent sexual offenses, that Mansfield suffered from pedophilic disorder, and that as a result of this disorder, Mansfield lacked volitional control over his sexual urges and was likely to commit violent predatory sexual offenses unless he was kept in custody and received treatment.

Following the prosecution case, the defense rested without presenting any evidence. After hearing argument from counsel, the court sustained the petition and ordered Mansfield committed to the DMH for an indeterminate term.

On May 17, 2018, Mansfield filed a timely appeal.

Mansfield’s appellate counsel has filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the

² *People v. Marsden* (1970) 2 Cal.3d 118.

record. (*People v. Wende*, *supra*, 25 Cal.3d 436.) However, in a letter filed on November 19, 2018, which contains several attachments, Mansfield asks this court to stay the proceedings, dismiss the brief filed by appellate counsel and appoint new appellate counsel. Mansfield contends he was denied the effective assistance of counsel at the trial on the underlying petition because his counsel failed to make appropriate objections and subpoena any witnesses, including a psychologist who allegedly found he did not meet the criteria for commitment as a SVP.

To the extent that Mansfield challenges the court's ruling on his *Marsden* motion, we affirm that ruling. The transcript of the hearing discloses that the court allowed Mansfield ample time to explain why he believed he had been denied the effective assistance of counsel and that defense counsel provided reasonable explanations for the deficiencies in representation alleged by Mansfield. The transcript also supports the court's denial of the motion including its ruling that there had not been a breakdown in the relationship between Mansfield and defense counsel and its conclusion that Mansfield had not been denied the effective assistance of counsel.³

Further, following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.⁴

DISPOSITION

The order is affirmed.

³ Mansfield also contends his appellate counsel provided ineffective assistance of counsel because he never contacted Mansfield until he filed a *Wende* brief in this matter. We do not consider this claim because it relies on facts outside the record. However, even if this claim were properly before us we would reject it because the proffered facts on which it is based fail to establish deficient representation or prejudice.

⁴ Mansfield's requests to stay the proceeding, dismiss the brief filed by appellate counsel and appoint new appellate counsel are denied.